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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/839,245

Filing Date: April 23, 2001

Appellant(s): CICHANOWICZ, J. EDWARD

Robert K. Carpenter  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/6/04.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct other than a typo in line 1 stating "13-29" instead of 13-20.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

Appellant's brief includes a statement that claims 1-8 and 13-20 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

5224034	KATZ et al.	6-1993
5033004	VANDIVER, III	7-1991

**(10) Grounds of Rejection**

The following ground(s) of rejection were presented in the final action and are applicable to the appealed claims:

***Claims 1-8 and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katz et al. (US Patent 5,224,034) in view of Vandiver, III (US Patent 5,033,004).***

Katz et al. discloses an automated method for conducting buy and sell transactions over a network for a non-commodity material or item that can have differing chemical and physical and/or electrical characteristics comprising: a plurality of sellers each providing to the network product characteristics via a computer of a quantity of the non-commodity available for sale and a cost of the available non-commodity, creating a

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database of the non-commodity including information relating to each non-commodity available (such as when sellers input product information, quantity and price information into the computer system); a buyer providing to the network a performance simulation model of a process with equipment in operation or intended to be in operation and with a desired amount of the non-commodity for use in the process (such as when the buyer provides product constraints and/or product requirements which identify products and when buyer indicates their desired volume/demand) the performance simulation model being able to estimate the production cost and operating characteristics of the process based on a non-commodity material or item used in the process (for example when the system carries out the algorithm to determine the optimal purchasing strategy in view of the product price, discount data and constraints; cost of products are estimates of the production cost and operating characteristics include the use of the listed products); the buyer also providing desired operating characteristics of the process that are dependent upon the non-commodity material or item (such as when the buyer provides desired operating characteristics of the process that are dependent upon the product when the buyer provides constraints relating to the goods they desire to purchase); estimating the cost of operating the process or producing goods from the process for at least some of the different non-commodities from the database of different non-commodities in the performance model to make a comparison of the at least some of the different non-commodities to determine which, if any, of the at least some of the different non-commodities are within the maximum process cost (such as when the system estimates the cost for the different products based on discount data for comparison, the cost of the

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products roughly estimates the cost of operating a process of producing goods when the product purchased makes up the majority of the cost to produce, such as in the power generation business); and providing the buyer with a list of non-commodities that when used as input for the process provide certain operating characteristics (buyer is presented an optimal list of selected products based on the demand and constraints which the buyer provided that correlate to the buyers operating system).

Katz et al. discloses the claimed automated method for conducting buy and sell transactions over a network for a non-commodity material or item that can have differing characteristics but is silent regarding the buyer and seller specifically providing physical, chemical and/or electrical characteristics of the product and the utilization of a database and standard datamining techniques to record performance of the process with the selected non-commodity item and applying this information in the formulation of a request-for-proposal for future purchases of non-commodity materials or items.

Vandiver, III discloses that it is known in the art to provide a method of selling material with differing characteristics (such as coal) wherein the buyer and seller provide physical, chemical, and/or electrical characteristics of non-commodity materials (such as sulfur, ash, moisture, Btu/lb, etc.) which represent operation characteristics of the process in order to model the optimal blends to determine minimum cost blends to meet environmental and energy production requirements (such as the buyer being a coal burning utility which needs a blended coal to meet parameter requirements for sulfur emissions and to meet power generation requirements at the minimum cost, see column 4, lines 14+). It would have been obvious to one having ordinary skill in the art

at the time the invention was made to provide the method for conducting buy and sell transactions of Katz et al. with the buyer and seller providing physical, chemical, and/or electrical characteristics which represent desired operating characteristics as taught by Vandiver, III, with the motivation to be that the system could model and determine the optimal blends for buyers to determine minimum cost blends to meet environmental and energy production requirements.

Regarding the use of standard datamining techniques to record performance of the process with the selected non-commodity item and applying this information in the formulation of a request-for-proposal for future purchases of non-commodity materials or items, Examiner takes official notice that it is notoriously old and well known in the art of modeling for buyers to track the performance of products used in order to modify the model to emulate actual results and buyers would use their experience to modify future purchasing constraints and product requirements in order to improve the performance of their production system. Examiner takes further official notice that standard datamining techniques are old and well known in the art of computer systems for the purpose of acquiring knowledge (laws and regularities) automatically from data in order to achieve an business objective of an enterprise such as identifying critical characteristics of products used. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method for conducting buy and sell transactions of Katz et al. and Vandiver, III, as modified above, with the use of datamining techniques to automatically acquire knowledge from buyer's performance of products used and using this knowledge to alter future request-for-proposals of

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Examiner's Official Notice with the motivation that buyers could automatically acquire knowledge to improve their systems by acquiring better more cost effective non-commodity items.

Regarding the buyer providing a desired maximum power generation cost, it is notoriously old and well known in the art of trade for buyers to present to their suppliers their operating demands including maximum prices they can pay for generating especially when the major production costs for power generation is coal. Coal costs roughly estimate the maximum generation costs.

Regarding transportation costs being incorporated in the system, Vandiver, III discloses in column 3 that transportation costs are used in the system in order to account for costs associated with transportation of the coal.

The following response to arguments for clarification were provided in the final office action:

Applicant has argued that neither Katz et al. nor Vandiver teach or suggest a buyer providing to a computer network a performance simulation model. Examiner contends that the system of Katz et al. and Vandiver both disclose the buyer providing to a computer network a performance simulation model when the buyer provides product requirements and constraints (in Katz et al.) and provides specific percentages of sulfur, ash, moisture, and Btu/lb (in Vandiver) at these limitations represent a model of the chemical, mechanical, or electrical process of the buyer's equipment currently in operation or intended to be in operation.



Applicant further argues that neither Katz et al. nor Vandiver teach or suggest the buyer providing a maximum cost of operating the process. Examiner contends that claim 1 does not require this limitation because of the “or” used in lines 15 and 16 and instead require the buyer provide desired operating characteristics—such as product requirements and constraints such as Btu/ton, percent sulfur, which Examiner contends Katz et al. and Vandiver teach.

**(11) Response to Argument**

Response to Argument

**a. Neither Katz nor Vandiver disclose a plurality of sellers providing information including a quantity available to a network**

Appellant argues that neither Katz nor Vandiver disclose a plurality of sellers providing information including a quantity available to a network.

The Examiner contends that Katz does teach a plurality of sellers providing information including a quantity available for use on a computer system. Katz is silent regarding a supply network but Examiner contends that it is common and well known to enter data via a network in order to communicate among more than one computer. See column 9 line 50 regarding a maximum quantity of product which may be purchased from a supplier. See also the abstract and tables 2-5 which present a plurality of sellers information.

The Examiner points out that the Appellant has not defined how this feature is patentably distinct from previous common procurement activities and how this is

advantageous over the prior art. Examiner also points out this is the first time the Appellant has argued this point.

**b. Neither Katz nor Vandiver disclose considering a maximum process cost or make a comparison of the different non-commodities to determine which are within the maximum process cost**

Appellant argues that neither Katz nor Vandiver disclose the consideration of a maximum process cost or the making of a comparison of the different non-commodities to determine which are within the maximum process cost.

The Examiner agrees that Katz and Vandiver do not disclose the consideration of a maximum process cost and thus is the reason the Examiner took Official Notice that it is old and well known in the art of trade for buyers to present to their suppliers their operating demands including maximum prices they can pay. The act of buyers giving a maximum price is common practice to negotiate a sale between a buyer and a seller. The Examiner further stated that for non-commodities such as coal the cost of the coal roughly estimates the maximum power generating cost as the cost of coal constitutes the main cost in power generation. Regarding the making of a comparison of the different non-commodities available in order to determine which are within the maximum process cost the Examiner used this Official Notice to modify Katz to incorporate the use of this maximum process cost into the algorithm carried out in Katz which determines which products meet the "optimal purchase strategy". See column 3 lines 9+ regarding the optimal purchase strategy.

The Examiner further notes that claim 1 does not require the limitation of the buyer providing a maximum cost of operating the process because of the “or” used in lines 15 and 16 and instead require the buyer to provide desired operating characteristics (such as product requirements and constraints such as Btu/ton, percent sulfur, etc... which Examiner contends Vandiver teaches).

The Examiner points out that the Appellant has not defined how this feature is patentably distinct from previous common procurement activities and how this is advantageous over the prior art. Examiner also points out this is the first time the Appellant has argued this point and has not contested the Examiner’s taking of Official Notice.

**c. Neither Katz nor Vandiver disclose providing of a list of non-commodities that are within the desired maximum process cost**

Appellant argues that neither Katz nor Vandiver disclose providing of a list of non-commodities that are within the desired maximum process cost.

As explained above, the Examiner took Official Notice that it is old and well known in the art of trade for buyers to present to their suppliers their operating demands including maximum prices they can pay as this is common practice in negotiating a sale between a buyer and a seller. Further regarding the making of a comparison of the different non-commodities available to determine which are within the maximum process cost the Examiner used this Official Notice to modify Katz to incorporate the use of this maximum process cost into the analysis (algorithm) carried out in Katz which determines which products meet the “optimal purchase strategy” and thus the

presentment of non-commodities that meet the desired maximum process cost utilized in the algorithm comprise a "list". Examiner reads the term "list" broadly to include more than one option, only one option, or no option available at all. See column 3 lines 9+ regarding the optimal purchase strategy.

The Examiner further notes that claim 1 does not require the limitation of the buyer providing a maximum cost of operating the process because of the "or" used in lines 15 and 16 and instead require the buyer provide desired operating characteristics (such as product requirements and constraints such as Btu/ton, percent sulfur, etc... which Examiner contends Vandiver teaches).

The Examiner points out that the Appellant has not defined how this feature is patentably distinct from previous common procurement activities and how this is advantageous over the prior art. Examiner also points out this is the first time the Appellant has argued this point and has not contested the Examiner's taking of Official Notice.

**d. Neither Katz nor Vandiver disclose applying information in the formulation of a request-for-proposal for future purchases of materials**

Appellant argues that Neither Katz nor Vandiver disclose applying information in the formulation of a request-for-proposal for future purchases of materials.

The Examiner agrees that Katz and Vandiver do not disclose applying information in the formulation of a request-for-proposal for future purchases of materials and this is the reason the Examiner took Official Notice that datamining is old and well known in the art of computer systems for the purpose of acquiring knowledge

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automatically from data in order to achieve a business objective such as identifying critical characteristics of products used and that it would have been obvious to modify the method of Katz and Vandiver to automatically acquire knowledge from buyer's performance of products used and use this knowledge to alter future request-for-proposals (requirements for procurement of materials) to acquire better more cost effective non-commodity items.

The Examiner points out that the Appellant has not defined how this feature is patentably distinct from previous common procurement activities and how this is advantageous over the prior art. Examiner also points out this is the first time the Appellant has argued this point and has not contested the Examiner's taking of Official Notice.

**e. (Regarding claims 13-20) Neither Katz nor Vandiver disclose considering a maximum coal cost or desired maximum power generation cost; a list of coals that meet buyer needs; an automated method for conducting transactions; and that Katz compares products by price alone**

Appellant argues that neither Katz nor Vandiver disclose the consideration of a maximum coal cost or desired maximum power generation cost; a list of coals that meet buyer needs; an automated method for conducting transactions; and that Katz merely compares products by price alone.

The Examiner agrees that Katz and Vandiver do not disclose considering a maximum coal cost or desired maximum power generation cost and this is the reason the Examiner took Official Notice that it is old and well known in the art of trade for buyers to present to their suppliers their operating demands including maximum prices

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they can pay. This is common practice in negotiating a sale between a buyer and a seller. The Examiner further stated that for non-commodities such as coal the cost of the coal roughly estimates the maximum power generating cost, as the cost of coal constitutes the majority of the cost in power generation. Regarding the making of a comparison of the different non-commodities available to determine which are within the maximum process cost the Examiner used this Official Notice to modify Katz to incorporate the use of this maximum process cost into the algorithm carried out in Katz which determines which products meet the "optimal purchase strategy". See column 3 lines 9+ regarding the optimal purchase strategy.

Regarding a "list" of coals or products that meet the buyer's needs. Katz disclose providing both a "list of selected products as determined from invoking the algorithm" (column 3 line 13+) and the presenting of an optimal purchasing strategy (column 3 line 11) which both can be construed to be lists.

Regarding an automated method for conducting transactions, this limitation is located in the preamble of the claim and is therefore given little patentable weight. Never-the-less automating a transaction over a computer network is common in procurement of materials.

Regarding the argument that Katz compares products by price alone, the Examiner has used both Vandiver and Official Notice to incorporate characteristics of materials and the inclusion of the buyer submitting a maximum price into the analysis as these are common factors considered in procurement of materials or items.

The Examiner points out that the Appellant has not defined how these features are patentably distinct from previous common procurement activities and how this is advantageous over the prior art. Examiner also points out this is the first time the Appellant has argued these points and has not contested the Examiner's taking of Official Notice.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
Elaine Gort  
Examiner  
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September 14, 2004

Conferees

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